

**State of Vermont
WATER RESOURCES BOARD**

**Re: Styles Brook Reservoir
Stratton, Vermont**

Docket No. WET-03-02

ADMINISTRATIVE DETERMINATION

This decision pertains to a Petition filed by The Stratton Corporation (Stratton) with the Water Resources Board (Board) seeking reclassification of a wetland located on its real property in the Town of Stratton, Vermont, from Class Two to Class Three pursuant to 10 V.S.A. 10 V.S.A. § 905(7)-(9) and §7 of the Vermont Wetland Rules (VWR) (eff. Jan. 1, 2002). As explained below, the Board concludes that the subject wetland, Styles Brook Reservoir, is a man-made pond, and it performs none of the wetland functions listed in VWR § 5 at a significant level nor do certain small adjacent wetlands which may be contiguous with the reservoir. Accordingly, the Board determines that the Styles Brook Reservoir and adjacent wetlands described in this decision are not significant wetlands under the VWR and it therefore reclassifies the wetlands from Class Two to Class Three.

I. PROCEDURAL HISTORY

On June 20, 2003, Stratton filed its Petition through representative Shelley E. Gustafson, Pioneer Environmental Associates, LLC., P.O. Box 354, Vergennes, Vermont 05491.

On July 1, 2002, the Board's Executive Officer determined that the Petition was in substantial compliance with VWR § 7 and the Board's Rules of Procedure, and he docketed the Petition as WET-03-02.¹

A Notice of Petition was sent to all parties required to receive notice pursuant to VWR §§ 7.3 and 7.4. In addition, the Notice of Petition was published in the *Brattleboro Reformer* on July 4, 2003. The Notice of Petition set a deadline of August 4, 2003, for the filing of any written comments or requests for hearing or both, pursuant to VWR § 7.4.

On July 25 and July 30, 2003, Stratton filed certain supplemental information concerning the location of the subject wetland and adjacent wetlands referenced in the Petition.

On August 4, 2003, Stratton Area Citizens Committee (Citizens) filed a letter opposing Stratton's reclassification request and Stratton filed a letter in response.

¹ In his acknowledgment letter of July 1, 2003, the Executive Officer asked Stratton to submit a letter duly authorizing Pioneer Environmental to serve as its representative in this proceeding and also to provide additional information regarding the Slopeside at Stratton Homeowners Association. Stratton timely responded to this request with a supplemental filing on July 17, 2003.

No other public comment was filed regarding the Petition and there were no requests for a hearing. Accordingly, the Board did not hold a public hearing or a site visit in this matter.

The Board considered the Petition in deliberations on August 5, 2003. The Board's record consisted of official wetland maps on file at the Board's office and information filed by Stratton, including a supportive certification from Alan Quackenbush, Wetland Ecologist, for the Vermont Wetlands Office, dated June 16, 2003. See Petition, Appendix D - Vermont Wetlands Office Certification. The Board also considered the letter filed by Citizens and Stratton's responsive letter.

II. FINDINGS OF FACT

1. Styles Brook Reservoir is shown as a Class Two wetland on the Vermont Significant Wetland Inventory (VSWI) map for the Town of Stratton (Nov.26, 2002). On National Wetlands Inventory (NWI) Map #28 (1977), it is identified as "POWZh" (Palustrine, Open Water, Intermittently Exposed/Permanent, and Diked/Impounded). On NWI Map #28B (1994) it is identified as "PUBZh" (Palustrine, Unconsolidated Bottom, Intermittently Exposed/Permanent, and Diked/Impounded).
2. Styles Brook Reservoir is approximately 1.3 acres in area. Its shape is roughly triangular, with the depth increasing in regular increments from all sides into the center, reaching approximately 16 feet at its deepest location.
3. Styles Brook Reservoir and its presumptive 50-foot buffer zone are located entirely on real property owned by Stratton in the Town of Stratton, Vermont. The reservoir is located at the end of Shatterack Road and is immediately adjacent to the existing Slopeside at Stratton residential development and within the Styles Brook watershed.
4. Styles Brook Reservoir is a man-made feature that was constructed in 1961 to supply drinking water to the Stratton Mountain Resort. In 1983, the reservoir discontinued its service as a drinking water source when Stratton updated its system to rely on ground-water wells coupled with concrete storage tanks. At the time of its construction, the reservoir also provided back-up fire protection for the resort area. However, Stratton presently has water storage capacity in excess of the recommended volume necessary for fire protection at the resort. Therefore, the reservoir's fire protection function is no longer essential to the resort's operations.

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5. The reservoir was originally fed by a diversion weir located within Styles Brook, to the south and upgradient of the water system. In October 2001, the weir was removed to improve downstream water quality conditions in the brook.
6. Currently, surface-water inflow to the reservoir is limited to an unmaintained drainage swale associated with an unpaved utility road which enters the reservoir along its western edge. This surface-water feature drains a relatively small forested area to the west of the reservoir. The reservoir's upslope drainage area is only 3.49 acres.
7. The reservoir drains to the south via a two-foot diameter perforated riser situated approximately 6 feet from the edge of the reservoir at its southern end. The outlet from the reservoir outflow is located roughly 75 feet south of the reservoir, and the waters draining from the reservoir are combined with collected runoff from the Stratton resort prior to discharging into Styles Brook. Styles Brook drains into the North Branch of Ball Mountain Brook.
8. The substrate of Styles Brook Reservoir consists of stony sandy loam fill. Excessive stoniness prevents soil borings deeper than 14 inches. The substrate profile, however, is highly disturbed and does not contain soil horizons that would typically form under natural conditions.
9. Emergent plant growth within Styles Brook Reservoir is limited to a small band of *Typha* sp. (Cattail) located along its northeastern edge. The dimensions of this vegetative growth are approximately 140 feet long by 30 feet wide, or 4,200 square feet. This vegetative growth developed following the construction of the reservoir and is contained within the area of the constructed berm.
10. Saplings of *Acer rubrum* (red maple), *Fraxinus americana* (white ash), and *Betula populifolia* (gray birch) are dominant along the berm of fill that contains Styles Brook Reservoir. This comprises the largest portion of woody vegetation within the 50-foot buffer zone. Along the lip of the reservoir, *Spiraea tomentosa* (steepleshub) and *Osmunda cinnamomea* (cinnamon fern) also are common.
11. The area surrounding Styles Brook Reservoir and the presumptive 50-foot buffer zone is dominated by mixed land use including residential development, ski mountain utility roads and trails, and mixed hemlock/northern hardwood forest.

12. Styles Brook Reservoir is not a part of a larger wetland complex. However, several small and disturbed wetland areas are located in close proximity to Styles Brook Reservoir and five of these may be contiguous with the reservoir.

Wetlands #1 and #7, delineated by Stratton's wetland consultants and identified in its supplemental filing of July 17, 2003, are located upgradient of and drain into the reservoir during high flow periods. Wetland #1 is approximately 4,380 square feet in area, while wetland #7 is approximately 870 square feet in area. Wetland #1 is located along the southern edge of the reservoir. It is located at the end of the work road that parallels the western edge of the reservoir and appears to be the result of drainage upslope of the reservoir which has collected within tire ruts and disturbed soils, thereby supporting a variety of common wetland plants. Wetland #7 is located along the southwesterly edge of the reservoir and is likely the result of soil disturbance associated with a previously excavated drainage ditch.

Three other wetlands are downgradient of the reservoir and are located at the toe of the constructed embankment on the easterly and northeasterly sides of the reservoir. These are wetlands #2, #3, and #4. They are likely recharged from leakage from the reservoir. Wetland #2 has been delineated by Stratton and it is approximately 4,030 square feet in area. Wetlands #3 and #4 have not been delineated and they are estimated to be each 400 square feet in area.

The Styles Brook tributary that runs west and north of the reservoir also has associated riparian wetlands, but these are not contiguous with Styles Brook Reservoir. These are wetlands #5 and #6. Wetland #5 has been delineated by Stratton and is approximately 1,180 square feet in area. Water from wetland #5 is diverted in a northerly direction away from Styles Brook Reservoir into wetland #6. Wetland #6 has not been delineated, but it is estimated to be 3,000 square feet in area. Neither wetland #5 nor wetland #6 appear on the NWI or VSWI maps identified in Finding 1 above.

13. The Board finds that Styles Brook Reservoir does not serve the following ten functions at a significant level:

Function 5.1 (Water storage for flood water and storm runoff) - As noted in Finding 6, the drainage area for the Styles Brook Reservoir is relatively small. What value the reservoir might have for water storage for flood water and storm runoff has been greatly reduced because most runoff within the vicinity of the reservoir was purposely routed away from the reservoir in order to protect the reservoir's historic use as a drinking water supply.

Function 5.2 (Surface and ground water protection) - Because Styles Brook Reservoir receives minimal runoff from surrounding areas, it does not have the opportunity to play a significant role in the treatment of surface water for contaminants and removal of nutrients. While Styles Brook Reservoir may make some contribution to the treatment of surface water through retention, slow release, and recharge, it does so as a function of the reservoir's design and not as a result of wetland processes. Finally, the reservoir does not contribute to the flows of a Class A surface water as it is located downgradient of the Class A section of Styles Brook. See Finding 5.

Function 5.3 (Fisheries habitat) - Field observations of the reservoir during Spring 2003 indicate only minimal use of the Styles Brook Reservoir by aquatic organisms. Living organisms that have been noted include a caddisfly larva, a frog and several adult eastern newts. However, insufficient food and cover resources severely limit the extent and distribution of aquatic life within the reservoir.

Function 5.4 (Wildlife and migratory bird habitat) - Given its highly disturbed substrate, Styles Brook Reservoir does not support the growth of significant emergent wetland vegetation. Due to the virtual absence of such vegetation within the reservoir, there is minimal feeding and cover habitat available for breeding birds and other wildlife species.

Function 5.5 (Hydrophytic vegetation habitat) - Except for the band of cattails located along its northern edge, Styles Brook Reservoir is devoid of vegetation and therefore does not constitute significant hydrophytic vegetation habitat.

Function 5.6 (Threatened and endangered species habitat) - The 1997 Significant Habitat Maps, produced by the Nongame Natural Heritage Program (NNHP), ANR, do not show that there is any significant natural community or rare, threatened or endangered species within or adjacent to the Styles Brook Reservoir.

Function 5.7 (Education and research in the natural sciences) - Styles Brook Reservoir is an artificial feature that has not functioned historically as an educational resource. It is unlikely that it would be used for educational purposes in the future as it is not publicly owned or readily accessible to the general public and it is not ecologically interesting. See Functions 5.3, 5.4, 5.5, 5.6, and 5.7 above and Function 5.8 below.

Function 5.8 (Recreational value and economic benefits) - Styles Brook Reservoir is not currently used for recreational activities. Due to its obscure location and the fact that it is

surrounded by a fence, it is not easily accessed by the general public. It does not provide significant habitat for game species or other resources that would make it attractive for wildlife observation and other recreational purposes, such as fishing. See Functions 5.3 and 5.4, above.

Function 5.9 (Open space and aesthetics) - Styles Brook Reservoir appears as an unnatural and artificial feature within the surrounding landscape. The constructed berm and surrounding fence actually detract from local aesthetics.

Function 5.10 (Erosion control) - Because only minimal runoff enters Styles Brook Reservoir, as noted in Finding 6, significant erosive forces are not present. Therefore, the reservoir does not play an important role in erosion control for the Styles Brook watershed.

14. Of the five small wetlands that may be contiguous with Styles Brook Reservoir, wetlands #1, #2, #3, #4, and #7, none serve any of the ten functions listed in VWR § 5 at a significant level.
15. Stratton intends to utilize the land within and adjacent to Styles Brook Reservoir to provide access to an upslope area planned for the development of future residential housing. Stratton envisions that the reservoir would be modified such that a smaller water feature would remain. This feature would likely be used in some manner for stormwater treatment and control for existing and future development, consistent with the Stratton Water Quality Remediation Plan.

III. CONCLUSIONS OF LAW

The Board may reclassify any wetland to a higher or lower classification. VWR §§ 4.4 and 7.1. It may do so upon receipt of a petition from an affected property owner. VWR § 7.1. Stratton is an affected property owner for the purposes of VWR § 7.1. Therefore, it is authorized to request reclassification of the subject Class Two wetlands to Class Three.

A wetland appearing on an NWI map for the State of Vermont is presumed to be a Class Two wetland, unless determined otherwise by the Board as provided by VWR § 7. VWR §§ 4.2(b) and 4.4. NWI maps for the State of Vermont, revised to conform with the VWR and annually updated to reflect any reclassifications, are published for each Town in Vermont by the

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Secretary of ANR and are known as VSWI maps. VWR § 4.5(a). Styles Brook Reservoir is depicted as a wetland on the applicable NWI maps and on the VWSI map for the Town of Stratton (Nov.26, 2002). Accordingly, Styles Brook Reservoir is presumed to be a Class Two wetland.

A Class Two wetland is presumed, unless the Board determines otherwise, to serve all of the functions specified in VWR § 5 at a significant level. VWR § 4.2(b). A Class Three wetland, on the other hand, is a wetland “determined not to be sufficiently significant to merit protection” under the VWR, based on an evaluation of that wetland’s functions. If the Board concludes that the wetland does not serve any of the ten functions at a significant level, it may reclassify a Class Two wetland to a Class Three wetland. See Re: Mt. Mansfield Company, Docket No. WET-02-08, Administrative Determination (Feb. 25, 2003); Re: ABC/MRC, Inc., Kwiniaska Golf Course - West Pond & East Pond, Docket No. WET-02-06 and -07 (Cons.), Administrative Determination (Jan. 7, 2003); Re: Ladd’s Landing, Ltd., et al., Docket No. WET-01-09, Administrative Determination (Nov. 21, 2001).

The Board concludes, based on uncontroverted facts contained in Stratton’s Petition, that the Styles Brook Reservoir does not perform any of the ten functions identified in VWR § 5 at a significant level. The Board bases its decision on the functional assessment performed by Stratton’s consultant, a senior wetland scientist assisted by a staff scientist, at Pioneer Environmental Associates, LLC. ANR Wetlands Office staff reviewed a copy of the Petition, including Stratton’s functional assessment, and agreed with the Petitioner’s request. See Petition, Appendix D - Vermont Wetlands Office Certification. Therefore, the Board concludes that the wetland is not a significant wetland meriting protection under the VWR. Accordingly, the Board determines that the subject wetland should be reclassified from Class Two to Class Three and the Board directs the Wetlands Office, ANR, to remove the Styles Brook Reservoir from the VSWI map for the Town of Stratton.

Pursuant to VWR § 4.2(b), all wetlands contiguous to an NWI-mapped wetland are presumed to be Class Two wetlands, unless determined otherwise by the Board in the course of a reclassification proceeding. Re: Plains Road Wetland, Docket No. WET-92-05, Decision (Apr. 29, 1994). The term “contiguous” is defined in VWR § 2.07 as meaning “sharing a boundary or touching” and includes “situations where the water level of the wetland is directly influenced by the water level of the adjacent waterbody or wetland” and “where a man-made structure (e.g. roadway) divides a wetland, if surface water is able to flow over, under or through that structure.” ANR has interpreted the language in the contiguous definition, “sharing a bound or touching,” to mean that the three parameters defining wetlands (soils, vegetation and hydrology as provided in VWR § 3.2(a)) must be found continuously between the wetland areas in question, broken only by a man-made structure which divides the areas. Re: Plains Road Wetland at 5-6.

Stratton identified in its Petition four small wetlands in close proximity too, and possibly contiguous with, Styles Brook Reservoir. It identified a fifth, possibly contiguous wetland in its supplemental filing of July 17, 2003. All five wetlands are identified in Stratton's supplemental filing of July 17, 2003, as wetlands #1, #2, #3, #4, and #7. While there is limited information in the Petition, as supplemented, concerning the soils and vegetation within these five wetlands, it appears that to some degree or another they are hydrologically connected with the reservoir. Three of the wetlands, wetlands #2, #3, and #4, appear to receive at least a part of their water from leakage from the reservoir impoundment. The other two wetlands, wetlands #1 and #7, are upgradient of but drain into the reservoir. The record supports the conclusions that all of these wetlands have developed as a result of site disturbance, either in the construction of the reservoir or in the creation of an adjacent drainage ditch. None of the wetlands has characteristics which alone, or together, would make them significant for any of the functions identified in VWR § 5. Therefore, to the extent that these wetlands may be contiguous with the reservoir if they share hydric soils and vegetation in addition to hydrology, they are reclassified from Class Two to Class Three as part of the Board's determination that the Styles Brook Reservoir is not a significant wetland meriting protection under the VWR.²

Finally, the Board notes that it received public comment from Stratton Area Citizens Committee (Citizens) opposing the petition. Citizens surmises that Styles Brook Reservoir was originally constructed in a natural wetland and that the reservoir today serves functions 5.1 (Water storage for flood water and storm runoff) and 5.2 (Surface and ground water protection), and could serve function 5.9 (Open space and aesthetics) were the fence surrounding the reservoir taken down. Citizens, however, provided the Board with no information to establish that the reservoir performs these functions at a *significant* level or, more importantly, that it does so as a result of *wetland processes* as opposed to the reservoir's design. See Re: The Orvis Company, Inc., Administrative Determination at 4 (Nov. 21, 2001) (to the extent that two man-made ponds were determined to serve functions 5.3, 5.8, and 5.9, this was not as a result of natural wetland

² Given the highly disturbed substrate of Styles Brook Reservoir, described in Finding 8, it is unlikely that the reservoir and the adjacent wetlands "share" hydric soils. If in fact these small wetlands do *not* "share" hydric soils with Styles Brook Reservoir, they are presently classified as Class Three wetlands rather than Class Two wetlands. However, given the degree of site disturbance that has historically occurred in and around the reservoir, it is difficult to conclusively say whether the five small wetlands are or are not contiguous with Styles Brook Reservoir. Therefore, for the sake of clarifying that the five small wetlands and Styles Brook Reservoir are to have the same classification status, the Board's order contemplates that Styles Brook Reservoir and wetlands #1, #2, #3, #4, and #7, shall be classified as Class Three wetlands.

processes but rather through the maintenance by petitioner of the ponds for their intended purpose as ponds for fly casting demonstrations and practice.) Even if the reservoir had originally been constructed in a natural wetland (a fact which the Board does not find), it cannot be said that the reservoir still serves any *wetland* functions at a significant level. Rather, the undisputed facts are (1) that the reservoir was created and the surrounding landscape was greatly disturbed *before* the VWR were adopted and (2) that what functions are presently performed by the reservoir are a direct consequence of the structure's design, not as a result of natural wetland processes. Therefore, while the reservoir may support some wetland vegetation, the Board concludes that it is not a significant wetland meriting protection under the VWR.

IV. ORDER

It is hereby ordered:

1. Styles Brook Reservoir and any contiguous wetlands, located on real property owned by The Stratton Corporation in the Town of Stratton, Vermont, and described in this decision, are reclassified from Class Two to Class Three; and
2. The Wetlands Office, ANR, is directed to remove Styles Brook Reservoir from the Vermont Significant Wetland Inventory map for the Town of Stratton.

Dated at Montpelier, Vermont, this 7th day of August, 2003.

WATER RESOURCES BOARD

/s/ David J. Blythe

David J. Blythe, Chair

Concurring:

Lawrence H. Bruce, Jr.
Jane Potvin
John D.E. Roberts
Michael Hebert